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Fact Sheet for the Chairman,
Subcommittee on Courts, Civil Liberties,
and the Administration of Justice, House
Committee on the Judiciary

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October 1985

LEGAL SERVICES

Grant to the
Constitutional Law
Center



128374



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

October 29, 1985

HUMAN RESOURCES
DIVISION

B-217872

The Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts,
Civil Liberties, and the
Administration of Justice
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

In response to your October 3, 1985, request, we have reviewed the expenditures and activities of the Constitutional Law Center (CLC), a Legal Services Corporation (LSC) grant recipient in Cumberland, Virginia. On September 30, 1984, LSC awarded CLC a \$337,000 one-time grant beginning September 15, 1984, and ending September 14, 1985, to represent eligible clients either directly or as co-counsel, and to provide technical assistance, training, and publications on legal issues concerning the protection of the constitutional rights of the poor. LSC has approved an extension of CLC's grant period through December 31, 1985.

Because you requested a written product for use at a hearing scheduled for October 30, 1985, we are providing the enclosed fact sheet, which contains information we have obtained.

Specifically, we focused our efforts on determining:

- Whether CLC funds, staff, and equipment had been used for partisan political purposes.
- The nature and extent of services CLC has provided to LSC grant recipients and eligible clients, and CLC's future planned activities.
- Whether CLC funds, staff, and equipment had been used to assist the operations of the Center for the Judicial Studies (CJS), an organization that CLC's executive director also heads.

In summary, we found that:

- CLC financial records did not show any payments to the executive director's campaign for the Virginia House of Delegates, and according to CLC's executive director, CLC staff and equipment are not used for his political campaign.
- CLC has provided assistance in 14 instances, 2 of which were for LSC grant recipients, and is behind schedule in completing the work stipulated in the grant.
- CLC and CJS maintain agreements for renting space, leasing a vehicle, and sharing the use of other property each owns. Two part-time CLC employees also work for CJS.

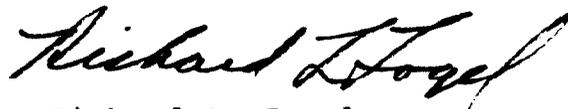
The information was obtained from CLC financial records and administrative files and interviews with CLC and LSC officials.

We gave CLC officials an opportunity to review a draft of this document and provide oral comments. These comments have been included in this document where appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this fact sheet until 30 days from its issue date. At that time we will send copies to CLC, LSC, and other interested parties and make copies available to others on request.

Should you need additional information on the specifics of this matter, please call John Hansen of my staff on 523-8666.

Sincerely yours,



Richard L. Fogel
Director

LEGAL SERVICES CORPORATION GRANT
TO THE CONSTITUTIONAL LAW CENTER

The Constitutional Law Center (CLC) is a nonprofit, tax-exempt corporation created on July 5, 1984, and based in Cumberland, Virginia. CLC's executive director is Dr. James McClellan, a former constitutional law professor who from 1981 to 1983 served as chief counsel and staff director of the Subcommittee on Separation of Powers, Senate Committee on the Judiciary. Dr. McClellan is also director of the Center for Judicial Studies (CJS), a tax-exempt, public policy institution founded in 1983, also located in Cumberland, Virginia. According to its statement of principles and purpose, CJS ". . . focuses exclusively on the problem of judicial activism and seeks to limit the powers of the Federal Judiciary."

On September 30, 1984, the Legal Services Corporation (LSC) notified CLC that it would receive a \$337,000 one-time grant beginning September 15, 1984, and ending September 14, 1985, to serve as a national support center on constitutional law. However, CLC did not receive the first grant installment until December 1984. In September 1985, LSC approved CLC's request that its grant period be extended through December 31, 1985.

LSC-funded national support centers provide assistance and support to local legal services programs in particular areas of law, such as housing and mental health, or on the legal needs of specific groups of clients, such as the elderly and native Americans. The national support centers' activities are based on sections 1006(a)(1) and 1006(a)(3) of the LSC act. These provisions authorize the Corporation to provide financial assistance to programs furnishing legal assistance to eligible clients and to undertake directly, or by grant or contract, activities related to the delivery of legal assistance, including research, training, and technical assistance, and to serve as a clearinghouse for information. The assistance that national support centers provide includes representing eligible clients either directly or as co-counsel, providing training and technical assistance, and disseminating information.

The following questions and answers address the information we have obtained concerning CLC's expenditures and activities.

1. **Question:**

Do CLC financial records show any funds being paid to Dr. McClellan's campaign for the Virginia House of Delegates?

Answer:

CLC's checkbook and cash disbursements journal do not show any payments to Dr. McClellan's campaign.

2. **Question:**

Has any CLC equipment been used for Dr. McClellan's campaign?

Answer:

According to Dr. McClellan, (1) his campaign is run out of a building on his property which is separate from CLC's office space, (2) the campaign building has a phone line separate from CLC's, and (3) the campaign makes no use of CLC equipment or property, such as the photocopier, typewriters, word processor, or vehicle.

We verified that the campaign occupies space separate from CLC and has a separate telephone number. We were unable to verify whether the automobile was used for the campaign, because CLC does not maintain any records on the vehicle's use. We were also unable to verify the use of the photocopier, typewriters, or word processor.

3. **Question:**

Do any CLC employees work on Dr. McClellan's campaign?

Answer:

As of mid-October 1985, CLC had two full-time and six part-time employees. CLC also retains two consultants. According to Dr. McClellan, no CLC employees, other than him, work on his political campaign, as either paid employees or volunteers. He also said that if an employee so chooses, he or she can put a bumper sticker on their car or wear a campaign button during their off work hours.

Two full-time and two part-time CLC employees told us they did not work on Dr. McClellan's campaign at any time, nor did they contribute any money to his campaign. A list of organizations and individuals who had contributed \$100 or more to Dr. McClellan's campaign, which he provided us, did not include any CLC employees or consultants.

4. Question:

What is Dr. McClellan's CLC salary, and does it represent more than half of his annual professional income?

Answer:

From December 1, 1984, through March 30, 1985, CLC paid Dr. McClellan a monthly salary of \$1,875 (\$22,500 annually). This initial salary was approved by CLC's board of trustees at their December 18, 1984, meeting.

According to Dr. McClellan, his current CLC salary is \$2,500 per month. CLC's payroll records indicate that from April 1 through September 30, 1985, he was paid a monthly salary of \$2,500, or at an annual rate of \$30,000. According to Dr. McClellan and CLC's general counsel, CLC's board of trustees approved this increase, retroactive to April 1, 1985, at their October 21, 1985, meeting.

CLC time and attendance records for the period from March through September 1985 indicate that Dr. McClellan worked an average of about 21 hours a week for CLC. CLC did not maintain time and attendance records before March 1985.

According to a September 12, 1985, letter from CLC's certified public accountant, Dr. McClellan received 24 percent of his professional income from CLC and 76 percent from CJS for January 1 through August 31, 1985.

5. Question:

What assistance has CLC provided to legal services grant recipients and others?

Answer:

According to CLC's general counsel, CLC has provided assistance in 14 instances, as shown in the following table.

<u>Source of request for assistance</u>	<u>Number of requests</u>	<u>Number of hours spent on the requests</u>
Potential client	9	33 to 43
Legal services grant recipient	2	37
Others ^a	<u>3</u>	<u>13</u>
Total	<u>14</u>	<u>83 to 93</u>

^aA retired college professor, a private attorney, and a public policy group.

6. Question:

Have legal services grant recipients used CLC's toll-free 800 number to request assistance?

Answer:

CLC's toll-free number was first advertised in early June 1985 in the first issue of its publication the Constitutional Law Reporter. According to CLC's general counsel, LSC grant recipients had not been informed before then that services were available through the toll-free number.

CLC's bills for the toll-free number, dated March 1 through September 1, 1985, indicate that CLC has received 697 incoming calls (an average of about 100 a month) that lasted for about 77 hours (an average of about 11 hours a month).

According to the general counsel, no log is maintained to show the source of incoming calls on CLC's toll-free number. He indicated the toll-free number has been used by CLC staff while out of town on business, LSC staff, CLC board members, congressional staff, and staff of a few legal services grant recipients.

7. Question:

What is the status of CLC's publication of the Constitutional Law Reporter?

Answer:

According to CLC's revised work plan, CLC is required to publish six issues of the Constitutional Law Reporter by the end of December 1985. This publication is a bimonthly review of developments in constitutional law that affect the poor or may be important to lawyers representing them. As of October 1985, CLC had published two issues of that publication. The issues have been mailed to all LSC grant recipients, LSC's board of directors, other LSC officials, law school libraries, CLC's board of trustees, and nonprofit public policy organizations, which Dr. McClellan said included both conservative and liberal groups.

According to Dr. McClellan and the general counsel, CLC is behind schedule in publishing the Constitutional Law Reporter. According to a revised work schedule prepared on August 12, 1985, and agreed to by LSC on September 13, 1985, the third and fourth issues were to have been mailed by September 13 and

October 18, respectively. As of mid-October 1985, CLC had completed research on these issues; however, they needed to be revised and edited before they would be sent to the printer.

Dr. McClellan and the general counsel attribute the delay in publication to (1) LSC's failure to provide timely approval of CLC's request for a grant extension to December 31, 1985, and (2) the amount of time CLC has spent on our investigation, an LSC monitoring visit, and media inquiries concerning allegations about its activities. However, they still plan to complete all six issues by December 31, 1985.

8. Question:

What is the status of CLC's work on two litigation manuals and how were the topics for the manuals chosen?

Answer:

According to the general counsel, work on CLC's first litigation manual on religious liberty in the schools was progressing according to schedule. He said that as of October 15, 1985, two of the three sections of the first manual were completed. The final section of the manual is due by November 30, and publication and issuance are scheduled by the end of 1985.

Dr. McClellan said he got the idea for the topic of religious liberty in the schools from the Special Issues Committee of the Virginia Bar Association (a voluntary organization separate from the Virginia State Bar), of which he is a member.

According to a 1982 LSC background paper on national support centers, such as CLC, a major activity of the support centers is the development of manuals designed to assist legal services program attorneys in representing eligible clients with particular problems. The former director of LSC's research institute, who was responsible for national support centers, said that the topics for these manuals generally come from the demand for information expressed by legal services program attorneys requesting assistance from support centers. The general counsel said that CLC did not solicit the views of legal services programs or attorneys on the need for such a manual.

According to Dr. McClellan, the manual will deal with such issues as prayer, Bible readings, and meetings of religious groups in schools. He said the manual would be distributed to legal services programs and to attorneys who represent school boards and school officials.

According to CLC's general counsel, on September 13, 1985, LSC vice president Charles Jarvis requested that CLC change the topic of its second manual from the Second Amendment rights of the poor to bear arms to the legal and regulatory barriers to the economic advancement of the poor. Mr. Jarvis said LSC suggested the new topic because it did not believe the initial topic was clearly related to the needs of the poor.

The general counsel said that CLC has developed a tentative list of subissues for the second manual and has begun research on them. According to CLC's third quarterly report, CLC believed that a major effort will be needed to complete the second manual by its expiration of its grant.

9. Question

What is the status of CLC's conference?

Answer:

CLC has tentatively scheduled a 1-day conference on "Constitutional Issues Raised by Use of Public Funds to Support Political Advocacy" for November 15, 1985, in Washington, D.C. According to CLC's general counsel, the conference is still in the initial planning stages, but some people have been contacted about participating. Consequently, CLC has not made any mailings to the legal services community announcing the conference. According to the general counsel, the conference date may have to be pushed back due to time spent on our investigation, and responding to inquiries that CLC believes are politically motivated. The general counsel told us that CLC staff decided on the conference topic and did not solicit input from legal services attorneys or programs on their need for a conference on this topic; however, two legal services program attorneys have inquired about attending the conference. Although the use of public funds to support political advocacy is a familiar issue, he does not believe the issue's constitutional ramifications have been fully explored.

10. Question:

When did CLC request an extension of its grant, and when did LSC approve the extension?

Answer:

Dr. McClellan requested LSC to approve the grant extension in an August 13, 1985, letter. Attached to the letter was a memorandum to Dr. McClellan from CLC's general counsel which summarized the reasons an extension was needed and included a

revised schedule that the general counsel believed CLC could meet if LSC rapidly approved the extension. In a September 13, 1985, letter, LSC notified CLC that its request for a grant extension was approved and that LSC expected CLC to adhere to the revised schedule.

11. Question:

Why did CLC request a no-cost extension of its grant through December 31, 1985?

Answer:

CLC believed the extension from September 14 through December 31, 1985, was necessary to complete its required work under the grant, including publishing six issues of the Constitutional Law Reporter, holding a conference, and producing two litigation manuals. CLC believed this extension was justified by a number of factors, including:

- The late announcement of the grant (the grant period began on September 15, 1984, but was not announced until September 30).
- CLC's initial inability to hire staff and equip its office because the first installment of the grant was paid in late December 1984, rather than when the grant was announced on September 30.
- The need to devote substantial portions of its grant to capital items, such as a law library, office equipment, and furniture, which left limited funds for staff.
- The long time it took to turn the CLC operation into a functioning organization.

CLC did not finish hiring staff until March 1985. Therefore, by the time CLC was underway, only about 6 months was left until the expiration of the grant. Nonetheless, CLC believed it had a reasonable prospect of completing its required work if allowed to expend grant funds through December 31, 1985.

12. Question:

What assistance has LSC provided to CLC during the grant period?

Answer:

According to Dr. McClellan and CLC's general counsel, CLC received virtually no help from LSC in getting the program started. They said that LSC did not provide timely responses to CLC inquiries. Dr. McClellan attributed this lack of a timely response to the fact that no one was effectively in charge at LSC and said that an LSC vice president has apologized to him for the previous lack of assistance. According to LSC's director of national and state support, LSC had provided no technical assistance to CLC to help it comply with the grant terms. According to LSC's vice president, as of September 23, 1985, LSC had not monitored or evaluated CLC. During August 1985, however, two LSC staff members visited CLC to gather information about its operations because of the questions being raised in the press. LSC's vice president characterized this as a technical assistance visit.

According to the former director of LSC's research institute, who was responsible for national support centers, between 1979 and 1981, LSC provided substantial technical assistance to five new national support centers. This assistance included sending teams to help the new support centers get started, and providing training on the requirements of LSC's act and regulations.

13. Question:

Do any CLC employees work for CJS?

Answer:

As discussed in our answer to question 3, as of mid-October 1985, CLC had two full-time and six part-time employees. CLC also retains two consultants. According to Dr. McClellan, two part-time CLC employees, he and his secretary, work for CJS, the other Cumberland, Virginia-based organization he heads. CLC time and attendance records indicate that the secretary works 4 days per week for CLC, and Dr. McClellan told us that the secretary spends 1 day per week on CJS business. Time and attendance records from March through September 1985 indicate that Dr. McClellan spends an average of about 21 hours per week on CLC business. Dr. McClellan is also director of CJS.

14. Question:

Do CLC and CJS share equipment?

Answer:

According to an April 18, 1985, memorandum of understanding pertaining to CLC and CJS operations, the guiding principle in all arrangements between the two organizations is that expenses attributable to each should be kept separate and that each organization should bear its own costs.

Each organization owns a photocopier. According to the memorandum, neither organization is to make copies on the photocopier belonging to the other unless a record is kept and reimbursement is made at the rate of 5 cents per copy.

According to the memorandum, CJS owns a telecopier, which it permits CLC to use provided CLC pays for any long-distance charges attributable to its use of the telecopier.

The memorandum states that CLC has a computer and two printers valued at about \$7,277 and CJS has a 5,000-volume legal library valued at about \$40,000. In exchange for gaining access to the library, CLC gives CJS access to the computer and printers. According to the memorandum, CLC projects take priority if there is a conflict in scheduling computer or printer time. We did not verify the use of this equipment.

According to Dr. McClellan, expenses for the telephone sets are allocated between CLC and CJS based on the number and type of sets each uses. Telephone equipment bills in CLC files verify this arrangement. Expenses for telephone lines and long-distance services, however, are billed and paid separately, according to the memorandum.

15. Question:

What leasing arrangements has CLC made for the use of vehicles?

Answer:

CLC is currently leasing one vehicle from CJS on a monthly basis at the rate of \$373 per month. For a 2-month period, CLC leased a second vehicle from CJS for \$224.78 per month. CLC also pays the insurance costs for the vehicles it uses. According to a January 15, 1985, CLC letter to LSC, the leased vehicles were needed to pick up supplies in Richmond, some 40 miles east of CLC, and to make trips to the post office. Dr. McClellan told us the vehicles were also needed to travel to the

University of Virginia and the University of Richmond to perform legal research. According to Dr. McClellan, LSC approved this lease agreement.

We could not determine how many miles the vehicle had been driven on CLC business, because no record was made of the vehicle's mileage when CLC began using the vehicle in January 1985. From February 1984 until January 1985 the vehicle was used by CJS. As of October 28, 1985, the vehicle had been driven 41,056 miles.

16. Question:

Does CLC lease office space from CJS?

Answer:

CLC leases office space from CJS for \$467.62 per month. This space is located in both an addition to Dr. McClellan's residence and a detached cottage on the property. CLC pays CJS utility expenses based on the square feet of office space it occupies in the addition. In lieu of paying the cottage's utility expenses, which are not separately metered, CLC pays the total cost of janitorial services for the principal office and the cottage. The cost of these services amounts to \$50 per month.

17. Question:

Do CLC and CJS have interlocking boards of directors?

Answer:

According to Dr. McClellan, the board of CJS is composed of himself, Joyce Boyce, and Louis Wacker. CJS also has an advisory board, which Dr. McClellan described as honorary with no power and no existence in law. Five current and former members of that advisory board--Robert D'Agostino, John Baker, Jules Gerard, Grover Rees, and Charles Rice--have served on the CLC board of trustees.

18. Question:

What expenses, by category, has CLC incurred?

Answer:

CLC attached the following financial statement to its third quarterly report to LSC.



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